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October 13, 2010

BY HAND

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

OCT 13 2010
Part of
Public Record

EX Parte No. 706

Re: Petition of Union Pacific Railroad Company to Institute a Rulemaking Proceeding to Adopt Reporting Requirements for Positive Train Control

Dear Ms. Brown:

Enclosed for filing are an original and fifteen copies of a petition by Union Pacific Railroad Company requesting that the Board institute a rulemaking proceeding to consider the adoption of reporting requirements for positive train control.

An additional paper copy of this filing is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



Ex Parte No. 706

PETITION OF UNION PACIFIC RAILROAD COMPANY
TO INSTITUTE A RULEMAKING PROCEEDING TO ADOPT
REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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PETITION OF UNION PACIFIC RAILROAD COMPANY
TO INSTITUTE A RULEMAKING PROCEEDING TO ADOPT
REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL

Pursuant to 49 C.F.R. § 1110.2(b), Union Pacific Railroad Company ("UP") hereby requests that the Surface Transportation Board ("Board") institute a rulemaking proceeding to consider the adoption of reporting requirements for positive train control ("PTC"). Under UP's proposal, the Board would require Class I railroads to report their capital investment in PTC, expenses associated with installing and operating PTC, and operating statistics associated specifically with lines on which carriers have installed PTC. Unless the Board establishes these requirements early in the PTC implementation process, it may be unable to account accurately for PTC costs in pursuing its general industry oversight responsibilities and specific regulatory initiatives, such as improving the Uniform Rail Costing System ("URCS") to better reflect the costs associated with transporting Toxic Inhalation Hazards ("TIH").

This Petition sets out the rationale for adopting reporting requirements for PTC and describes the information that railroads should be required to report.

UP has already spent a substantial amount of money developing PTC technologies and preparing for the implementation of PTC, and the pace of spending is increasing. Other Class I railroads are likely in a similar position. Accordingly, UP urges the Board promptly to institute a rulemaking to consider adopting reporting requirements for PTC.

I. THE RATIONALE FOR ADOPTING REPORTING REQUIREMENTS FOR PTC

The rationale for adopting reporting requirements for PTC is straightforward: Class I railroads are spending substantial amounts of money to implement PTC, and unless PTC-related financial and operating data are reported consistently, the Board may be unable to reconstruct the data in a manner that it finds satisfactory, and thus it may be unable or unwilling to use them in future proceedings. Accordingly, that carriers will separately account for their own PTC costs or that they could voluntarily submit PTC data themselves is no substitute for the consistency the Board could bring to the process through regulation.

UP recognizes that there will be differences of opinion on how PTC-related data may be used in Board proceedings. However, UP is not asking the Board to decide whether or how to use the data. Rather, UP is asking the Board in this Petition to recognize that the data are potentially significant and that therefore they should be reported in a consistent way and preserved to ensure their availability in the future. But if the Board does not take the minimal step of requiring consistent reporting, its inaction may have the effect of precluding subsequent efforts to attribute PTC costs to the parties that are causing the costs.¹

A. Railroads Will Spend Substantial Amounts Of Money To Implement PTC, And PTC Costs May Have A Significant Impact In Regulatory Proceedings.

Under the Rail Safety and Improvement Act of 2008, UP and other Class I railroads must install PTC by December 31, 2015 on (i) all main line over which intercity rail passenger

¹ UP recognizes that the Board is currently evaluating whether to pursue a rulemaking that would address how to classify separately the costs of hazardous materials operations and refine URCS to better capture the operating costs of transporting hazardous materials operations. *See Class I Railroad Accounting & Financial Reporting – Transportation of Hazardous Materials*, STB Ex Parte No. 681 (served Jan 5, 2008). As noted, UP's proposal is narrower in scope: it is focused on preserving the usefulness of specific data that might be lost if new reporting rules are not promptly established.

transportation or commuter rail passenger transportation is provided, and (ii) all main line used to transport TIH.²

PTC is being developed to be a predictive collision avoidance technology that will stop or slow a train before an accident occurs.³ It is designed to keep a train under its maximum speed limit and within the limits of its authority to be on a track. It requires sophisticated computer software, reliable communications systems, and other complex technologies to monitor current train conditions, detect upcoming track conditions, and take control of the train when needed. PTC systems are comprised of digital data communications networks; on-board computers, in-cab displays, and throttle-brake interfaces on locomotives; wayside interface units at switches and wayside detectors; and control center computers and displays.

Railroads are incurring substantial costs to install PTC, and they will incur substantial costs to operate and maintain their PTC systems. UP has estimated that it will spend approximately \$1.4 billion to implement PTC by the end of 2015.⁴ AAR estimates that total implementation costs for Class I railroads will be approximately \$5.8 billion.⁵ According to

² Pub. L. No. 110-432, § 104(a), 122 Stat. 4848, 4856-57 (2008) (codified at 49 U.S.C. § 20157(a)(1)).

³ The Federal Railroad Administration describes the basic attributes of PTC on its website. *See* <http://www.fra.dot.gov/pages/784.shtml>.

⁴ *See* Union Pacific Corp., Annual Report (Form 10-K), at 26 (Feb. 5, 2010).

⁵ *See* Association of American Railroads, Positive Train Control (June 2010), *available at* <http://www.aar.org/safety/~media/aar/backgroundpapers/positivetraincontrol.ashx>; *see also* CSX Corp., Quarterly Report (Form 10-Q), at 32 (July 7, 2010) (“Currently, CSX estimates that the total multi-year cost of PTC implementation will be at least \$1.2 billion for the Company.”); Norfolk Southern Corp., Quarterly Report (Form 10-Q), at 22 (July 30, 2010) (“NS expects the implementation of positive train control to result in additional capital expenditures of at least \$700 million in the years 2011 through 2015.”).

Federal Railroad Administration (“FRA”) estimates, railroads will spend between \$9.5 billion and \$13.2 billion over the next 20 years to install and maintain PTC systems.⁶

To place PTC costs into perspective, AAR estimates that the approximately \$5.8 billion that Class I railroads will spend to install PTC is roughly equal to what they have spent over the past four or five years combined on capital expenditures related to infrastructure expansion.⁷ FRA succinctly summarized the consequence of the requirement to install PTC: “railroads must immediately engage in a massive reprogramming of capital funds.”⁸

The potential impact of PTC costs in regulatory proceedings is demonstrated by a recent case under the Board’s Three-Benchmark methodology, *US Magnesium, L.L.C. v. Union Pacific Railroad*. The Board ultimately rejected UP’s effort to account for PTC costs in *US Magnesium*, primarily because it concluded that UP’s actual PTC costs were uncertain and that the attribution of those costs to the issue traffic was too complex an issue to analyze in the context of a single rate case.⁹ However, UP’s analysis showed that if a share of UP’s approximately \$1.4 billion in costs to install PTC were allocated to the issue traffic, the maximum lawful rates would have been approximately \$5,500 per car higher than if PTC costs were not considered.¹⁰

⁶ See Federal Railroad Administration, Docket No. FRA-2008-0132, Notice No. 3, *Final Rule: Positive Train Control Systems*, 49 CFR Parts 229, 234, 235, and 236 at 327 (Jan. 15, 2010).

⁷ See Association of American Railroads, Positive Train Control (June 2010), available at <http://www.aar.org/safety/~media/aar/backgroundpapers/positivetraincontrol.ashx>.

⁸ Federal Railroad Administration, Docket No. FRA-2008-0132, Notice No. 1, *Notice of Proposed Rulemaking: Positive Train Control Systems*, 49 CFR Parts 229, 234, 235, and 236 at 19 (July 21, 2009).

⁹ See *US Magnesium, L.L.C., v. Union Pac. R.R.*, STB Docket No. 42114, slip op. at 17 (served Jan. 27, 2010).

¹⁰ See Opening Evidence of Union Pacific Railroad at 61, *US Magnesium, L.L.C., v. Union Pac. R.R.*, STB Docket No. 42114 (filed Aug. 24, 2009).

The availability of accurate PTC-related financial and operating data will be critical to the Board as it pursues its regulatory responsibilities. PTC costs will be an issue as the Board pursues its initiative to review and update URCS, particularly in any effort to analyze whether URCS properly allocates costs to TIH.¹¹ PTC costs will likely be an issue in any proceeding regarding the common carrier obligation to transport TIH.¹² Moreover, PTC costs will continue to be an issue in rate cases, including cases under stand-alone cost methodology.¹³

B. The Board's Reporting Rules Do Not Include Separate Classifications For PTC-Related Financial And Operating Data.

The Board's reporting rules currently do not provide for separate recording for either capital investment in PTC or costs associated with operating and maintaining PTC. The Board's rules also do not provide for reporting operating statistics associated specifically with lines or locomotives on which carriers have installed PTC equipment. Unless the Board adopts rules that require more detailed reporting, there can be no assurance that PTC-related financial and operating data will be captured and preserved in a way that will allow the Board to use them in future proceedings.

¹¹ See *Class I Railroad Accounting & Financial Reporting – Transportation of Hazardous Materials* at 1-2; Surface Transportation Board, *Surface Transportation Board Report to Congress Regarding the Uniform Rail Costing System* at 19 (May 27, 2010).

¹² See *Establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee*, STB Ex Parte No. 698 (served Aug. 5, 2010).

¹³ See, e.g., Opening Evidence of Arizona Electric Power Cooperative at III-C-57 to C-60, *Az. Elec. Power Coop. v. BNSF Ry.*, STB Docket No. 42113 (filed Jan. 25, 2010); Joint Reply Evidence of BNSF Railway & Union Pacific Railroad at III.F-95 to F-96, *Az. Elec. Power Coop. v. BNSF Ry.*, STB Docket No. 42113 (filed May 7, 2010).

1. PTC-Related Investment And Operating Expenses Would Not Be Separately Classified Under Current Accounting Rules.

PTC systems involve four basic “segments”: wayside, locomotive, back office, and telecommunications. Each “segment” involves capital investment and operating expenses that are being reported, and will be reported, within Schedules 330, 332, 335, 352B, and 410 in Annual Report R-1 data that railroads file each year with the Board.

Wayside Segment: The wayside segment will be the most expensive segment of PTC, and the most expensive component of the wayside segment will be the installation of wayside interface units, which monitor the status of wayside devices (*e.g.*, signals, switches, and broken rail detectors) and communicate the status information to the locomotive and back office segments.

Locomotive Segment: The locomotive segment continually accepts, processes, and validates data that it receives from the office and wayside segments, as well as data obtained “locally,” such as locomotive control settings and global positioning satellite data. Each PTC-equipped locomotive will need an on-board train management computer, two display units, and other equipment.

Back Office Segment: The back office segment is the interface between a railroad’s existing management information systems and the locomotive segment of PTC. The physical components of the back office segment include multiple computers that must operate in a high-availability environment, but the most expensive aspect will be the work required to develop systems to integrate PTC with a railroad’s existing technology.

Telecommunications Segment: The telecommunications segment provides the data communications between the back offices segment, locomotive segment, and the wayside

segment. The components of the telecommunications segment include radios for each of the wayside interface units and base stations to transmit signals between the segments.

Training Expenses: In addition to costs associated with installing, operating, and maintaining PTC systems, railroads will incur substantial costs to train employees to use these new systems.

2. PTC-Related Operating Statistics Would Not Be Separately Identified Under Current Reporting Rules.

The Board's rules require railroads to report a wide variety of operating statistics in their Form R-1 reports. The operating statistics provide information that can be used to monitor and evaluate many aspects of the railroad industry, and the Board also uses them, together with cost data, to develop the cost/volume relationships that are then used to cost specific rail movements.

Currently, none of the schedules in Form R-1 provides for separate reporting of PTC-related operating statistics. For example: Schedules 700 and 720 require reporting of mileage operated for certain categories of tracks, but they do not require separate reporting regarding track equipped with PTC; Schedule 710 requires reporting regarding locomotive units, but it does not require identification of the number of units equipped with PTC; Schedule 755 requires reporting information about freight traffic, but it does not require separate reporting for TIH traffic.

C. The Board Should Promptly Establish Reporting Requirements So PTC-Related Financial And Operating Data Will Be Available For Use In The Future.

The Board has already identified the need to better capture the costs of transporting TIH as a reason for updating its accounting and financial reporting for Class I rail carriers, including

its Uniform Railroad Costing System.¹⁴ UP's proposal would facilitate the Board's efforts by ensuring that railroads are capturing and preserving potentially relevant data. The Board estimates that updating URCS would take approximately two years.¹⁵ However, UP and other railroads are presently incurring significant PTC-related costs as part of their efforts leading up to implementation of PTC.¹⁶ In addition, UP and BNSF have announced plans to implement PTC in the Los Angeles region in 2012 – which is likely before the Board could complete an update of URCS.¹⁷ Unless the Board promptly adopts new reporting requirements, railroads may not preserve PTC-related data using consistent methodologies, and the data may not be useable in a modified URCS. The Board has previously adopted additional reporting requirements to ensure the continued availability of data used as inputs to URCS.¹⁸

Moreover, even if the Board decides not to account for PTC-related costs in a modified version of URCS, the availability of consistent information about PTC costs and related operating statistics should prove valuable to the Board. PTC costs have been at issue in rate

¹⁴ See *Class I Railroad Accounting & Financial Reporting – Transportation of Hazardous Materials* at 1-2; Surface Transportation Board, *Report to Congress, supra*, at 19.

¹⁵ Surface Transportation Board, *Report to Congress, supra*, at i.

¹⁶ See Union Pacific Corp. Annual Report (Form 10-K), at 9 (Feb. 5, 2010); see also *Massive Infrastructure Project Under Way to Ready BNSF for PTC*, Railway: The Employee Magazine of BNSF at 14 (Summer 2010) (“Construction work to lay the infrastructure for positive train control (PTC) is under way.”), available at <http://www.bnsf.com/employees/communications/railway-magazine/pdf/201007.pdf>.

¹⁷ See Press Release, Union Pacific Railroad Corp., Union Pacific Initiates Aggressive Positive Train Control Implementation Plan for Commuter Lines in the Los Angeles Area by 2012 (Oct. 8, 2008), available at http://www.uprr.com/newsinfo/releases/safety/2008/1008_up-ptc.shtml; Press Release, BNSF Railway Company, BNSF Ready to Implement Positive Train Control (Oct. 8, 2008), available at <http://www.marketwire.com/press-release/BNSF-Ready-to-Implement-Positive-Train-Control-NYSE-BNI-908294.htm>.

¹⁸ See *Modification of Class I Reporting Regulations*, STB Ex Parte No. 538 (served Jan. 5, 2001).

cases under the Board's Three-Benchmark and stand-alone cost rate methodologies.¹⁹ PTC costs will likely be at issue in any case under the Board's simplified stand-alone cost methodology because the road property investment costs used in those proceedings do not reflect the costs of installing PTC.²⁰ The Board has previously adopted additional reporting requirements to obtain information for use in rate proceedings.²¹

Finally, the Board has an interest in compiling information regarding PTC-related costs and operating statistics in exercising its broad economic regulatory oversight of railroads. As discussed above, railroads will spend billions of dollars to comply with the congressional mandate to install PTC, and the Board has a responsibility to monitor the financial and service implications for railroad and shippers. Indeed, the Board has asked UP and other Class I railroads to provide information regarding the status of their PTC initiatives.²² The Board has previously adopted additional reporting requirements to keep apprised of significant issues affecting railroads and shippers.²³

¹⁹ See notes 9 & 13, *supra*.

²⁰ See *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1), slip op. at 45 (served Sept. 5, 2007) (discussing departures from rolling-average signals and communication costs).

²¹ See *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method*, STB Ex Parte No. 682 (served Feb. 26, 2010) (requiring annual submission of weighted average state tax rate for each Class I railroad for use in Three-Benchmark methodology).

²² See, e.g., Letter from Daniel R. Elliot III to James R. Young (Aug. 9, 2010), *available at* [http://www.stb.dot.gov/PeakLetters1.nsf/84a013f97c88faa18525777e00500f21/221fc9a5da456f698525777e00557504/\\$FILE/UP.pdf](http://www.stb.dot.gov/PeakLetters1.nsf/84a013f97c88faa18525777e00500f21/221fc9a5da456f698525777e00557504/$FILE/UP.pdf).

²³ See *Rail Fuel Surcharges*, STB Ex Parte No. 661 (Sub-No. 1) (served Aug. 14, 2007) (requiring reporting of data concerning fuel costs and fuel surcharges).

II. SPECIFIC PROPOSALS FOR NEW REPORTING REQUIREMENTS

UP's specific proposals for new PTC-related reporting requirements are simple and straightforward. They involve creating "PTC versions" of existing schedules in the Form R-1. The new "PTC versions" would not replace any existing schedules in the Form R-1 and would not alter the rules for reporting information in existing schedules. Rather, the "PTC versions" would be used to report information relating to PTC-specific investment, expenses, and operating statistics. UP developed these proposals with the objectives of ensuring the reporting of accurate, useful, and clear information, while minimizing the associated burdens on carriers, consistent with 49 U.S.C. § 11164.

Specifically, UP proposes creating "PTC versions" of Schedules 330, 332, 335, 352B, and 410. The "PTC versions" of these schedules would contain the same accounts as the current versions, but the dollar amounts reported would reflect the amounts attributable to PTC.

In addition, UP proposes creating "PTC versions" of Schedules 700 and 720, to report the mileage on which PTC is installed, as well as a "PTC version" of Schedule 710, to identify the number of locomotives equipped with PTC, and a "PTC version" of Schedule 755, to report the number of TIH carloads, car-miles, and train-miles.

Rail carriers would be required to submit the "PTC versions" of these schedules when they file their Form R-1.

Finally, UP proposes that these supplemental reports regarding specific expenditures on PTC and detailed information regarding TIH traffic would remain confidential, although aggregate statistics would be available publicly. UP believes that detailed cost data on PTC-specific investment and expenses is commercially sensitive, and UP is concerned that line-specific PTC-specific operating data would be regarded as security sensitive.

Respectfully submitted,



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